UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1097
12 March 1992

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE 1097th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 23 October 1991, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

General comment on article 7 of the Covenant

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.91-18041/4306B

The meeting was called to order at 3.35 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

1. The CHAIRMAN began by welcoming the delegation of Burundi which had, as the result of a procedural misunderstanding, come to present the initial report of Burundi, which had been due in 1991, but which had not been scheduled for consideration at the current session. For technical reasons (notably the fact that the text was not yet available in all the working languages), the Committee was unable to consider the report; he would nevertheless invite the delegation of Burundi to address a few words to the Committee.

2. Mr. NYONSABA (Burundi) thanked the Committee for the opportunity of saying a few words about the situation of human rights in Burundi, which had recently undergone a considerable improvement. He pointed out that non-respect for human rights in the past had been for the most part due to the ethnic conflicts which had beset the country. Since the installation of the Third Republic, the authorities had undertaken to heal existing divisions within Burundi society, and to that end they had set up a commission to examine the issue of national unity. The commission had submitted a report which had been discussed throughout the country, and had then been entrusted with the drafting of a National Charter for Unity, which had been adopted by referendum on 5 February 1991.

3. Efforts were currently being made to democratize the country. A "Constitutional Commission" had been set up with the task of examining institutional aspects. Its report should lead to the drafting of a new Constitution, to be adopted by referendum.

4. A further positive factor had been the dissolution of the Court of State Security. All offences were now tried by ordinary courts. In conclusion, he said that a Human Rights Commission had been created as part of the Central Committee of the Party of Union for National Progress (UPRONA), to promote a better understanding of the concept of human rights. There were also two leagues in Burundi that concerned themselves with human rights issues. All those factors indicated that a current favourable to human rights existed in the country, and the authorities were convinced that the trend would continue.

5. The CHAIRMAN thanked the delegation of Burundi for its explanations and welcomed the apparent signs of improvement. On behalf of the Committee, he congratulated the Burundi authorities on their exemplary punctuality in submitting the initial report of their country.

6. Mr. PRADO VALLEJO echoed the Chairman in commending the interest in the Committee displayed by the Burundi authorities and their willingness to cooperate in its work.

7. The delegation of Burundi withdrew.

Revised draft general comment on article 7 of the Covenant (CCPR/C/43/CRP.1)

8. The CHAIRMAN invited the members of the Committee to resume consideration of the revised draft general comment on article 7 of the Covenant (CCPR/C/43/CRP.1), begun the previous July. The text before the Committee reflected the discussion that had taken place at the previous session. He recalled that, at that time, the members of the Committee had considered and adopted paragraphs 1-12 of the text. Several months had elapsed since then, however, and in order to ensure consistency in the text and to make any adjustments that might be called for, he proposed, as a first step, that paragraph 13, followed by paragraph 14, be adopted; the Committee might then briefly review the draft in its entirety before formally adopting it as a whole.

9. He further suggested that, since the general comment was related to that concerning article 10 of the Covenant, members might examine the texts on article 10 and article 7 together. Since the Committee would probably adopt the general comment on article 10 at its session in March 1992, it might agree not to invite the secretariat to issue the general comment on article 7 as an official document for general distribution until it had compared the two general comments.

10. He invited statements on paragraph 13 of the revised draft general comment on article 7 of the Covenant (CCPR/C/43/CRP.1).

11. Mr. SADI said that the Committee should make it clear in the first sentence that the right to lodge complaints must not only be recognized, but also encouraged. The need for positive action by national authorities in that respect should be stressed. He further proposed that the phrase "promptly and impartially" in the second sentence should be expanded to read "promptly, impartially and effectively".

12. He further proposed, for the sake of clarity, a minor reformulation of the last sentence of the paragraph: the words "to victims of maltreatment" might be added after "available"; words such as "for that purpose" or "to seek and receive such remedies" might be added after "must follow".

13. Mr. WENNERGREN, remarking that he found it difficult to understand how, in the first sentence, the Committee could insist on recognition of a right that already existed and was written into the Covenant, proposed, to give added weight to the sentence in question, that it begin with the words "In accordance with article 2, paragraph 3, of the Covenant".

14. Mrs. HIGGINS recalled that, the previous July, the Committee had decided to compare the new text with the earlier general comment on article 7 (CCPR/C/21/Rev.1) in order to make sure that no significant element in the latter had been inadvertently omitted. Noting that the link between articles 7 and 2 of the Covenant established in the text of the earlier general comment (CCPR/C/21/Rev.1) no longer figured in the revised version (CCPR/C/43/CRP.1), she endorsed the suggestion by Mr. Wennergren that a reference to article 2 of the Covenant might be added to the beginning of the first sentence. The addition of the words "in domestic law" after "recognized" might satisfy Mr. Wennergren's concerns.

15. A further element which had unfortunately disappeared from the revised draft (CCPR/C/43/CRP.1) before the Committee was the affirmation that those found guilty must be held accountable. That was a particularly important point, and she suggested that it be incorporated after the second sentence of paragraph 13 in the following manner: "Those found guilty must be held accountable for their acts and brought to justice.".

16. She endorsed Mr. Sadi's suggestion for an addition to the second sentence of the paragraph, and proposed that the words "so as to make the remedy effective" be added after "authorities".

17. Lastly, the tense of the final verb in the paragraph should be changed to stress not so much the principle as the fact of determining what had actually occurred: "how they are dealt with" should read "how they have been dealt with".

18. The CHAIRMAN said he took it that the members of the Committee fully endorsed the various proposals for amendments.

19. Mr. SADI said he had a further point to raise concerning paragraph 13. While he was not opposed to including a reference to article 2 of the Covenant, he wondered whether that was the only relevant article; he drew the attention of members to the fact that other articles might be invoked in the same paragraph.

20. Ms. CHANET recalled that in the course of its first reading of the text, the Committee had expressed the desire to preserve the notion that persons held accountable might be the subject of an action for redress, but not necessarily of penal sanctions. Thus, the victim might obtain redress, but there was no obligation to bring the offending party to justice. It was true that the Convention against Torture provided that offenders should be brought to justice; but the Committee could not reasonably require of States parties to the Covenant that they apply all the provisions of the Convention.

21. Mr. ANDO pointed out to Mr. Sadi that if article 2 of the Covenant was specifically mentioned, that was because the right to lodge complaints was set forth in that article, thereby committing States to guarantee that right in those of their domestic laws which were directly related to the provisions of article 2.

22. Mr. MAVROMMATIS said that although it might not be necessary to refer to domestic law in every instance, he would not object to such a reference in the present case. He further remarked that in most cases, complaints against maltreatment by the police were investigated by the police authorities themselves; for that reason, it might be preferable to retain the sole criterion of "independent", rather than "competent and independent" authorities.

23. Mr. WENNERGREN suggested that to bring paragraphs 12 and 13 into line with each other, the word "must" in the second line of the latter might be replaced by "should".

24. The CHAIRMAN said it was his understanding that the Committee had deliberately employed the word "must". He further wondered whether the second part of the sentence - "those found guilty must be held accountable for their acts and brought promptly to justice" - was entirely justified, given that if a person was found guilty before being brought to justice, the principle of the presumption of innocence would not be respected. He added that the reference to article 2 of the Covenant appeared to be fully justified, since the object was to ensure that States parties incorporated the provisions of that article in their domestic law.

25. Mr. HERNDL stressed the importance of adding the words "in domestic law" after "recognized" at the end of the first sentence of paragraph 13. Moreover, he did not consider it necessary to refer to article 2 of the Covenant, since it was obvious that all the articles must be read in conjunction with article 2 in so far as the fundamental obligations on States parties stemmed from that article.

26. The CHAIRMAN suggested that the reference might be to paragraph 3 of article 2 rather than to the article as a whole, since the Committee was clearly concerned with the right of the victim to a remedy.

27. Mrs. HIGGINS suggested that the risk of giving the impression that a person might be considered guilty before being brought to justice might be avoided by wording such as: "Those who violate article 7 must be held accountable for their actions".

28. Mr. WENNERGREN remarked that in certain countries, liability for maltreatment by State officials lay with the State itself and not with the offenders. The proposed phrase "Those found guilty must be held accountable" might be amended to take account of that fact.

29. Mrs. HIGGINS submitted that Mr. Wennergren's suggestion was at variance with the Committee's consistent practice, whereby those committing acts of torture should be held personally accountable. It would be a regrettably retrograde step for the Committee to find the State responsible in that connection.

30. Mr. ANDO, referring to the remark by Mr. Wennergren, drew attention to the phrase "whether committed by public officials or other persons acting on behalf of the State" at the end of paragraph 12. That seemed to make the matter sufficiently clear.

31. Mr. HERNDL said that it was obvious from paragraph 12 that persons acting in violation of article 7 were personally liable to penalties for their actions and that the State was not held accountable for maltreatment inflicted by a public official.

32. Mr. WENNERGREN said that he found the term "accountable" to be ambiguous, because it could signify that a person simultaneously bore criminal and civil liability. The use of that term should consequently be avoided if the matter was not one of civil, but solely of criminal liability for an offence.

33. The CHAIRMAN pointed out that the issue of civil liability and compensation was dealt with by paragraph 14, while paragraph 12 addressed only the matter of criminal responsibility.

34. Mr. SADI wondered whether responsibility lay solely with the person actually committing an act of torture or also with the individual who ordered such an act. Police officers or security agents often, in fact, acted in response to orders from a superior. It might therefore be useful to invoke the liability of persons indirectly involved in the commission of torture.

35. The CHAIRMAN said that he believed the expression "Those who violate article 7" to encompass both the person committing the act and the superior ordering it to be carried out.

36. Ms. CHANET pointed out that article 4 of the Convention against Torture was very explicit, providing as it did that all acts of torture were offences under criminal law, and should be dealt with as such as far as both the principal offender and any accomplice were concerned. The same article also treated an attempt to commit torture as an offence identical with the commission of the act.

37. Mrs. HIGGINS suggested that Mr. Sadi's pertinent remark might be accommodated by the phrase "Persons who violate article 7, whether by ordering or perpetrating torture".

38. Mr. PRADO VALLEJO said that he shared Mr. Sadi's concern, and believed that the Committee might even go further. It frequently happened that, without specifically ordering torture, superiors indirectly incited their subordinates to obtain confessions, and that could lead to acts of brutality and torture, possibly with fatal consequences. For that reason, it was important to establish the responsibility of persons who created the conditions under which torture might appear justified. It was essential to be extremely specific in that connection, because legal loopholes were always regrettable.

39. Mr. AGUILAR URBINA endorsed the remarks by Mr. Sadi and Mrs. Higgins, and particularly the notion that those who ordered or incited acts of torture should be called to account.

40. Ms. CHANET said that in order to avoid reopening the debate which had taken place on the subject during the drafting of article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee might adopt the term used in the Convention, namely "complicity", which was compatible with both continental and Anglo-Saxon law.

41. Mrs. HIGGINS said that the term used in the Convention might indeed be employed by the Committee. To encompass all the elements that must be taken into account, and particularly the notion of incitement, she proposed the phrase "by ordering, tolerating or perpetrating prohibited acts ...".

42. Mr. SADI remarked that the wording generally employed in English to express the notion of complicity was "aiding and abetting". But was it not also necessary to take account of instances where States actually provided equipment or instruments of torture?

43. The CHAIRMAN remarked that in such cases, the international responsibility of the State would be automatically engaged on the grounds of violation of the Covenant. Internal responsibility would depend on domestic law.

44. Mr. PRADO VALLEJO said that that aspect of the question was extremely important, since it was frequently a minister or a ministry which procured equipment or instruments of torture.

45. The CHAIRMAN said he believed that mention of the toleration of torture, as suggested by Mrs. Higgins, would bring out the notion of the responsibility of persons providing the necessary equipment even more strongly than did the Convention. He therefore proposed the addition, at the end of paragraph 12 of the revised draft general comment on article 7, of a new sentence reading "Those who violate article 7, whether by ordering, tolerating or perpetuating prohibited acts, must be held responsible for their acts."

46. Paragraph 13 would read:

> "Article 7 should be read in conjunction with article 2(3) of the Covenant. The right to lodge complaints against maltreatment prohibited by article 7 of the Covenant must be recognized in domestic law. Complaints must be investigated promptly and impartially by competent and independent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedures which complainants must follow, and statistics on the number of complaints and how they have been dealt with."

47. Mr. WENNERGREN, supported by Mrs. HIGGINS, said that reference to "independent authorities" would make it impossible, under certain circumstances, for the authorities of the State involved to carry out their own investigations of complaints. In order not to deprive States parties of the possibility of conducting their own inquiries in such cases, or to oblige them systematically to set up independent bodies, it would be preferable not to speak of "independent" authorities.

48. Mr. SADI thought that it might be somewhat premature, at the investigation stage, to speak of "effective remedies".

49. Mr. MYULLERSON suggested that the enumeration in the new sentence proposed for the end of paragraph 12, dealing with those who violated article 7, might begin with the words "By organizing, ordering, tolerating ...", to cover the case of high-ranking officials who neither ordered nor tolerated acts of torture, properly speaking, but who made such acts possible by procuring the necessary equipment.

50. Mrs. HIGGINS said that Mr. Myullerson's concern might be met through the replacement of "organizing" by "encouraging".

51. The CHAIRMAN said that those amendments would be incorporated in the final text of paragraphs 12 and 13.

Paragraph 14

52. Mr. SADI considered that it might be indicated in the paragraph that amnesty for acts prohibited by article 7 should not be encouraged, and that in cases where the authors of such acts were granted amnesty, the right of victims to an effective remedy should not be affected. He consequently proposed that the first part of the second sentence be amended to read "Criminal amnesty for persons guilty of such offences should not be encouraged, and in any case should not affect the right ...".

53. Mrs. HIGGINS shared the view expressed by Mr. Sadi. In cases of torture in South America which had been examined by the Committee, two essential points had emerged: the first was that amnesty for persons guilty of such offences should not affect the right to redress; the second was that amnesty might be declared by the very persons responsible for such acts, but that when the electorate of the country in question decided that amnesty offered the best possible solution, it was difficult to see how such a decision could be contested. It might, therefore, be preferable to state that criminal amnesty for persons convicted of such offences should not be provided for save with the consent of the population of the country concerned, and in any event should not affect the right to effective remedy, including compensation and as full rehabilitation as possible. She added that the first sentence of the paragraph seemed superfluous, since the concern expressed was already reflected in paragraph 13.

54. Ms. CHANET said she could not accept a reference to "persons convicted of such offences", since in criminal law amnesty applied to acts and not to individuals.

55. Mr. MYULLERSON asked whether the amnesty referred to applied to offences of a political nature or was to be understood in a more general sense.

56. Mr. ANDO said that he could not agree with Mrs. Higgins that the first sentence of paragraph 14 might be deleted. Paragraph 10 of the draft general comment dealt with the question of prevention, paragraph 12 with sanctions and paragraph 13 with redress; it was thus necessary to retain in paragraph 14 the notion of the necessity of an immediate end to the acts prohibited by article 7, for otherwise they would continue to be committed.

57. Mr. SADI considered that it would be inadvisable to provide, as suggested by Mrs. Higgins, that the population of the country concerned might decide upon amnesty in the case of acts which frequently constituted crimes against humanity and, as such, called for scrutiny by the international community. In the case of Argentina, for example, the international community as a whole, and not merely the people of that country, was concerned by the issue of amnesty.

58. Mr. WENNERGREN said he found it difficult to understand why the final sentence of paragraph 14 referred to "effective remedy, including compensation". It appeared that effective remedy could only take the form of compensation and rehabilitation since criminal responsibility was annulled by the amnesty. A formulation such as "... effective remedy, with regard to compensation ..." would be preferable.

59. The CHAIRMAN wondered whether the first sentence of paragraph 14 might not be more suitably incorporated in paragraph 13; what was important was the right to the immediate end of the prohibited act, and the right to redress; those two matters were a logical consequence of the rights evoked in paragraph 13. As for the rest of the sentence ("and how this right is specifically applied"), that only reiterated ideas included in the preceding paragraph, which addressed the matter of complaints.

60. Mrs. HIGGINS said she favoured the incorporation of the first sentence of paragraph 14 in paragraph 13, and proposed the following formulation, which would become the second sentence of the revised paragraph 13: "In their reports, States parties should indicate how their legal system effectively guarantees to the victim of an act prohibited by article 7 the right to an immediate termination of the prohibited act and an appropriate remedy".

61. Concerning Mr. Wennergren's suggestion, she considered that preference should always go to the broader formulation, and consequently wished the word "including" to be retained.

62. On the matter of amnesty, it appeared that members of the Committee were divided as to whether an amnesty was acceptable under certain conditions or in no circumstances whatsoever. It might be wise merely to evoke the consequences of amnesty for the right to redress, in other words to retain the phrase as drafted. Furthermore, she considered that it was essential to speak of "convicted" rather than "guilty" persons, because if the amnesty only concerned persons who had already been convicted, it remained possible to look at the offence, which was not the case when the amnesty affected those responsible.

63. Mr. EL SHAFEI endorsed the proposal to relocate the first sentence of paragraph 14. He wished to propose a minor amendment to that sentence, because what the Committee was seeking was the immediate end of the prohibited act: consequently, there was no need to evoke at that point the notion of rights, even if a right was involved. The Committee's concern would be better expressed if the sentence read: "In their reports, States parties should indicate how their legal system guarantees the victim of an act prohibited by article 7 the immediate termination of the prohibited act as well as the right to obtain redress".

64. The amendment was adopted.

65. Mr. MYULLERSON, returning to the distinction between those guilty and those sentenced, recalled that during its examination of the reports of Argentina and of the possibility of obtaining redress in that country, the Committee had noted with dismay that those who had committed acts prohibited by article 7 had never been and never would be sentenced. It would thus be better to speak of the amnesty of "guilty" rather than of "convicted" persons.

66. Ms. CHANET also stressed that those committing acts of torture very often escaped sentence and were not even brought to trial; that, however, led her to join in the opposition to the word "guilty"; those responsible for the acts in question could not be considered as "guilty", at least in the legal sense of the term, because they had never been tried. In Argentina and elsewhere, all

the acts committed over a given period had been amnestied. The authorities did not seek those responsible for a given act and the victims had no right to redress. The amnesty certainly concerned the authors of the acts or the acts themselves.

67. Mrs. HIGGINS proposed the formulation: "Amnesty in respect of such offences".

68. The proposal was adopted.

69. Mr. HERNDL proposed that the phrase be strengthened by replacing the word "should" by "must".

70. The proposal was adopted.

71. The CHAIRMAN wondered whether it might not be advisable to mention again the matter of investigation as a form of remedy. In paragraph 13, it was specifically pointed out that complaints should be investigated; paragraph 14 was perhaps insufficiently explicit in that connection.

72. Mr. MAVROMMATIS said he was not in favour of reintroducing the notion of investigation in the final sentence of paragraph 14, because the fact of amnesty precluded further investigation, except, perhaps, in connection with the assessment of damages.

73. Mrs. HIGGINS submitted that reference to the notion of investigation was not called for, since the right to remedy presupposed investigation.

74. She continued to believe that merely to mention amnesties in connection with the right to remedy was insufficient, and that the Committee should endeavour to draw the attention of States parties to the fact that the greatest care should be taken in granting amnesties where torture was involved. For that reason, she proposed that the final sentence of paragraph 14 should be preceded by a phrase indicating that States were invited to consider whether an amnesty in respect of such offences was compatible with their duty to guarantee freedom from torture within their jurisdiction.

75. Mr. ANDO said that he himself feared that the reference to amnesty in a general comment by the Committee might in a sense encourage States in that connection. For that reason, Mrs. Higgins' proposal was welcome, although in hiw view the verb "consider" was not strong enough.

76. Mr. MAVROMMATIS endorsed the proposal by Mrs. Higgins and stressed that care should be taken in the formulation of the phrase not to give the impression of encroaching on the prerogatives of the State. The word "consider" thus seemed sufficiently strong.

77. Mr. ANDO said he yielded to that argument.

78. The CHAIRMAN said that he sympathized with Mr. Ando's concern: there was indeed a danger that to refer to amnesty might give a false idea of the Committee's position. It might therefore be advisable to set the matter in

proper perspective by explaining, before the phrase proposed by Mrs. Higgins, that the Committee had observed that certain States had granted amnesties to persons who had committed acts prohibited by article 7.

79. Mrs. HIGGINS warmly endorsed the Chairman's suggestion, and amended her own proposal to establish a better link with that suggestion and to take account of Mr. Ando's objection concerning the choice of verb. The phrase suggested by the Chairman would be followed by: "Amnesties may be incompatible with the duty of States to guarantee freedom from torture within their jurisdiction.

80. At the request of several members of the Committee, Mr. TISTOUNET (Centre for Human Rights) read out paragraph 14 as amended during the discussion: "14. The Committee has noted that some States have granted amensties in respect of such offences. Amnesties may be incompatible with the duty of States to guarantee freedom from torture within their jurisdiction. Amnesty in respect of such offences must not affect the right to an effective remedy, including compensation and such full rehabilitation as possible".

81. The CHAIRMAN requested the Secretariat to draw up a new text of the general comment concerning article 7 of the Covenant, incorporating all the revisions and with such minor drafting changes as might be necessary, so that the newly revised version might be submitted at the next meeting scheduled for general comments. If there was no objection, he would take it that the Committee endorsed his suggestion.

82. It was so decided.

The meeting rose at 5.55 p.m.